

ESTTA Tracking number: **ESTTA407701**

Filing date: **05/06/2011**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Highlife Distributing LLC d/b/a Top K2
Granted to Date of previous extension	05/08/2011
Address	19651 - 70th Avenue South Kent, WA 98032 UNITED STATES
Attorney information	Timothy L. Boller Seed IP Law Group PLLC 701 Fifth Avenue, Suite 5400 Seattle, WA 98104 UNITED STATES TimB@SeedIP.com, litcal@SeedIP.com Phone:206-622-4900

Applicant Information

Application No	85057245	Publication date	11/09/2010
Opposition Filing Date	05/06/2011	Opposition Period Ends	05/08/2011
Applicant	KTW ENTERPRISES, LTD PO BOX 19149 Portland, OR 97280 UNITED STATES		

Goods/Services Affected by Opposition

Class 003. First Use: 2009/03/27 First Use In Commerce: 2009/03/27
All goods and services in the class are opposed, namely: Incense

Grounds for Opposition

The mark is merely descriptive	Trademark Act section 2(e)(1)
Genericness	Trademark Act section 23
Other	As between the parties, opposer is the senior user

Related Proceedings	Opposer is aware the Applicant's application has been opposed by others (Opp No. 91199656 and No. 91198901). Opposer also is aware Applicant's alleged rights to use K2 as a mark is the subject of litigation before the U.S. District Court for the District of Kansas (Cause No. 10cv4138)
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Attachments	Opposition.PDF (4 pages)(354532 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Timothy L. Boller/
Name	Timothy L. Boller
Date	05/06/2011

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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HIGHLIFE DISTRIBUTING LLC d/b/a)	
Top K2,)	
)	Opposition No. _____
Opposer,)	
)	Serial No. 85/057245
v.)	
)	
KTW ENTERPRISES, LTD.,)	
)	Attorney Docket No. 450102.801
Applicant.)	
)	

NOTICE OF OPPOSITION

Opposer Highlife Distributing LLC d/b/a Top K2, which has a place of business at 19651 - 70th Avenue South, Kent, Washington 98032, believes that it will be damaged by the registration of the mark K2 shown in United States Trademark Application Serial No. 85/057,245 filed by Applicant KTW Enterprises, Ltd. ("Applicant") on June 8, 2010 and published for opposition on November 9, 2010. Therefore Opposer opposes that application.

Opposer applied for and obtained extensions of time to oppose the application.

The grounds for this opposition are as follows:

1. On information and belief, Opposer began using the mark Top K2 in connection with the marketing of incense before Applicant began using the alleged mark K2 in connection with the marketing of incense.

2. On information and belief, Opposer began using the mark Top K2 in connection with the marketing of incense before any predecessor in title of the Applicant began using the alleged mark K2 in connection with the marketing of incense.

3. On information and belief, Opposer, since prior to any date upon which Applicant can rely, adopted and have continuously used the mark Top K2 in commerce as a trademark for incense.

4. The term “K2” is a common, generic name for certain types of incense, as reflected in usage by consumers and competitors.

5. Applicant’s proposed mark K2 is at best merely descriptive and lacks acquired distinctiveness, and is not capable of identifying and distinguishing a single source.

6. Applicant has not established the requisite secondary meaning in its proposed K2 mark and, therefore, the mark is not entitled to federal registration.

7. Opposer and others are entitled to use the term K2 in connection with the marketing of incense.

8. Opposer will be damaged if Applicant secures a federal registration for this generic term in that such registration will discourage or prevent Opposer from using K2 in connection with the marketing of certain types of incense.

WHEREFORE, Opposer prays that this Opposition be sustained, Applicant’s application denied and the mark refused registration.

Correspondence Address


Please direct all communications to:

Timothy L. Boller
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701 Fifth Avenue, Suite 5400
Seattle, Washington 98104

DATED this 6th day of May, 2011.

Respectfully submitted,

SEED IP Law Group PLLC



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Seattle, Washington 98104
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Attorneys for Opposer
HIGHLIFE DISTRIBUTING LLC d/b/a Top K2

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of May, 2011, the foregoing **NOTICE OF OPPOSITION** was served upon Applicant's attorney of record by depositing same with the U.S. Postal Service, first-class postage prepaid, addressed as follows:

Leonard D. DuBoff
The DuBoff Law Group, LLC
6665 SW Hampton Street, STE 200
Portland, OR 97223-8354



Anne Calico

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